

**PLANNING AND ZONING COMMISSION
MINUTES
GENERAL MEETING/PUBLIC HEARING
July 12, 2005**

Place: Room 206
Town Hall

TIME: 8:00 PM

PLANNING AND ZONING COMMISSION MEMBERS ATTENDING:
Damanti, Spain, Bigelow, Forman, Conze

STAFF ATTENDING: Keating
COURT REPORTER : Syat

GENERAL MEETING

Chairman Damanti read the following agenda item:

Discussion, deliberation, and possible decisions on the following items:

Amendment of Business Site Plan #109/Special Permit, 980 Boston Post Road Associates, LLC, 980 Boston Post Road. Proposing to establish outdoor dining in front of the existing building.

The following motion was made: To waive the reading of the drafted Resolutions because each member of the Commission has had an opportunity to review the drafts prior to the meeting. A motion was made by Mr. Bigelow, seconded by Mr. Spain and unanimously approved.

The Commission discussed the proposed use of the public sidewalks along the Boston Post Road for the installation of tables and chairs related to the food service establishments. Commission members noted that wait staff services would not be provided to the patrons using the tables and chairs and that the Commission has jurisdiction to regulate the use but the applicant needs the permission of the property owner (the Connecticut Department of Transportation owns the street right-of-way for Route One). Commission members said that they want to approve the application but not open the door to other locations that are not as suitable to accommodate the tables and chairs. In this case, the tables and chairs are a replacement of the existing benches in front of one of the businesses and there still appears to be sufficient room for pedestrians to utilize the sidewalk without interference from the tables, chairs, or patrons using those facilities.

Commission members discussed the clarification of Item G within the draft. They agreed to re-arrange the language and the staff will take care of that.

The following motion was made: That the following revised Resolution be adopted by the Commission to grant temporary approval for the tables and chairs in front of the businesses at 980 Boston Post Road:

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**PLANNING AND ZONING COMMISSION
ADOPTED RESOLUTION
July 12, 2005**

Application Number: Amendment of Business Site Plan #109/Special Permit

Street Address: 980 Boston Post Road

Tax Assessor's Map #72 Lot #6

Name and Address of Applicant & Applicant's Representative: Robert F. Maslan, Jr., Esq.
Maslan Brown & Associates, LLP
9 Old King's Highway South, PO Box 37
Darien, CT 06820

Name and Address of Property Owner: 980 Post Road Associates, LLC
78 Harvard Avenue
Stamford, CT 06902

Activity Being Applied For: Proposing to establish outdoor dining in front of the existing building.

Property Location: The subject property is located on the south side of Boston Post Road, approximately 175 feet west of its intersection with Center Street.

Zone: CBD

Date of Public Hearing: June 14, 2005

Time and Place: 8:00 P.M. Room 206 Town Hall

Publication of Hearing Notices

Dates: June 2 & 9, 2005

Newspaper: Darien News-Review

Date of Action: July 12, 2005

Action: APPROVED WITH CONDITIONS

Scheduled Date of Publication of Action:
July 21, 2005

Newspaper: Darien News-Review

The Commission has conducted its review and findings on the bases that:

- the proposed use and activities must comply with all provisions of Sections 650, 1000, and 1020 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed use and activities are described in detail in the application, the submitted plan, and the statements of the applicant whose testimony is

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contained in the record of the public hearing, all of which material is incorporated by reference.

- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The application was submitted to establish “outdoor dining” in front of the existing building at 980 Boston Post Road. During the Public Hearing it became apparent that the substance of the request was not to establish “outside dining or food service”, but rather was to substitute the described metal tables and chairs for the existing and approved benches in front of the Upper Crust Bagel food service establishment and to install metal tables and chairs in lieu of the low shrubs in front of the proposed Cosi Restaurant. There are two restaurants approved for this building: Cosi (which has not yet opened) and Upper Crust Bagels. The proposal is to replace existing landscaping in front of Cosi, and existing benches in front of Upper Crust Bagels, with a total of six ‘table sets’ consisting of six small tables and twelve chairs. As noted in the application materials submitted by the applicant, “This will allow patrons of the two eating establishments to eat at [outside] tables instead of the existing benches.” The outside tables and chairs are to be offered as a convenience to patrons who have ordered food or beverages “to go”. No waiter/waitress service will be provided for the outside tables. Both restaurants have (or soon will provide) indoor seating facilities.
2. Although outdoor dining has been previously approved in a variety of locations throughout Darien, this is the first application for outdoor dining on a public sidewalk on Boston Post Road/Route 1. At this time, the Commission does not have a specific outdoor dining policy relative to this type of outdoor dining. Any such applications are treated as amendments of existing Business Site Plans and Special Permits, and must meet those standards.
3. During the public hearing it was noted that the sidewalk in front of this building is not owned by the applicant, nor by the Town; but rather, is owned by the State of Connecticut Department of Transportation (DOT). The applicant did not submit a letter from DOT authorizing him to proceed with the application, or authorizing the placement of ‘table sets’ on State property, nor does the record contain any prohibition of this proposed use by the DOT.
4. The applicant represented that the restaurant is immediately adjacent to a municipal parking lot. It was also acknowledged that there are no residential units in the vicinity of the proposed outdoor tables and chairs.
5. Very specific details regarding the proposed tables and chairs, the subject property, its adjacent sidewalk, and applicable property lines were submitted as part of this application. The survey entitled, “Zoning Location Survey of a portion of #980 Boston Post Road prepared for 980 Post Road Associates, LLC c/o Baywater Properties”, scale 1”=5’, dated May 10, 2005 was submitted for the record in this matter. This updated survey shows key details necessary for the Commission to make an informed decision on this application. According to the submitted survey, the sidewalk in front of this building is 12.5+/- feet wide from the edge of the building

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to the curb. Part of the sidewalk is already occupied by the benches in front of Upper Crust Bagels and there are trees and lampposts near the curb.

6. The proposed 'table sets' were specifically presented in terms of size, location, style and design. They are: 24" diameter tables with 18" diameter chairs. There will be a maximum of three tables and six chairs in front of Cosi, and a maximum of three tables and six chairs in front of Upper Crust Bagels. The 'table sets' are shown on the survey as being directly adjacent to the front of the building, extending only a maximum of 2 ½ feet (30 inches) in front of the building.
7. A series of photographs were submitted with the application showing the premises, the existing benches, and the proposed tables and chairs. In these photographs, the tables and chairs were shown to be in the exact same location as two existing benches in front of Upper Crust Bagels, and planted area in front of Cosi. The applicant noted that the specific size and location of the tables and chairs would encroach no further into the existing sidewalk than the existing benches, and the existing planter area (the existing planting area is very narrow). It is further noted that, like the existing street furniture, the proposed tables and chairs are made of heavy metal and thus are not more likely to be moved by heavy winds than are the existing benches.
8. The location and size of the use, the nature of the proposed operations involved in or conducted in connection with it, the size of the site in relation thereto, and the location of the site with respect to streets giving access to it, are such that the application is in harmony with the orderly development of the district in which it is located.
9. The location and nature of the proposed use, is such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings, or impair the value thereof.
10. The location and size of the use and the nature and intensity of the proposed operation conforms to the requirements of Section 1005 (a-g) and will not adversely affect public health, safety and welfare.
11. The design, location, and specific details of the proposed use and site development will not adversely affect safety in the streets nor increase traffic congestion in the area, nor will they interfere with the patterns of highway circulation in such a manner as to create or augment unsafe traffic conditions between adjoining developments and the district as a whole.

NOW THEREFORE BE IT RESOLVED that Amendment of Business Site Plan #109/Special Permit is hereby modified and approved subject to the foregoing and following stipulations, modifications and understandings:

- A. The Commission approves on a temporary basis the following plan submitted for the record in this matter: "Zoning Location Survey of a portion of #980 Boston Post Road prepared for 980 Post Road Associates, LLC c/o Baywater Properties", scale 1"=5', dated May 10, 2005. The specific size, location, style, and design of the tables and chairs was presented to the Commission during the application process, and shall be as shown in Figure 4 (photograph) and the submitted Zoning Location Survey show the tables and chairs positioned immediately adjacent to the front of the building.

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- B. The Commission approves the substitution of tables and chairs for the two existing benches and planter area for a variety of reasons specifically related to this property. These include, but are not limited to: the lack of nearby residential dwelling units; the sidewalk being at least 12.5 feet wide; the design of the tables and chairs; and the fact that the tables and chairs are of a specific, limited size and proper weight and in a specific location so as to not impede pedestrian access through the area. The Commission notes that the width of the tables and chairs is no greater than the width of the existing benches and planter area, and that there would still be an unobstructed width of at least ten feet of sidewalk (minus trees, etc.) available for pedestrians to walk by the building.
- C. The property owner and tenants shall be responsible for the upkeep and maintenance of this outdoor seating area. This includes keeping it free from trash, litter, and debris. The property owner and tenants are also responsible for ensuring that the location of the tables and chairs are as specifically shown on the approved plans. The tables should be firmly anchored in their appropriate locations. This is imperative, as the sidewalk in front of the building is 12.5+/- feet wide, and if chairs and/or tables are moved, pedestrian access may be inhibited, and safety impaired. The primary purpose for the sidewalk is for pedestrian access through the area, not for outside dining or expansion of the commercial uses.
- D. Any exterior umbrellas or awnings will require review and action by the Architectural Review Board (ARB) and Darien Health Department prior to installation and none have herein been approved. Umbrellas on these small tables would seem to be likely unstable in heavy winds and if not high enough, would further obstruct pedestrian passage along the sidewalk. Umbrellas are discouraged for these reasons. Awnings properly affixed to the building wall and with the approvals from the ARB and Health Department are encouraged. The placement of any trash cans outside will require review and action by the Fire Marshal (to ensure proper door clearance), the Darien Health Department, and the ARB prior to installation. Any trash cans to be placed in this area shall be emptied by the property owner and/or tenants as often as necessary.
- E. No increase in the number, or any change in the size, location, style, or design of the tables or the chairs shall take place without prior review and action by the Planning & Zoning Commission.
- F. There shall be no table service or staff service for the outdoor tables and chairs. As presented by the applicant at the public hearing, no alcohol shall be served or consumed at the tables. Since the tables and chairs are being presented as outdoor street furniture, they may be used by any members of the general public, and are not exclusively for use by restaurant customers.
- G. This approval is valid for nine months—until April 12, 2006. This will allow the Commission to better understand the issues and concerns related to outdoor seating, and related issues such as trash pickup, pedestrian convenience and safety, and movement of furniture once the ‘table sets’ have been placed and in use. After December 1, 2005, the applicant may re-apply to the Planning and Zoning Commission for an extension of this permit further into 2006 and possibly beyond, and/or a new permit. Any new permit or extension shall require compliance with rules, policies, and regulations in effect at that time. The applicant shall also pursue a formal letter of permission from the State of Connecticut Department of Transportation (DOT) for use of their

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property. Any future application will likely require prior written authorization and approval from DOT.

- H. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- I. The granting of this Special Permit does not relieve the applicant of responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agencies. This includes, but is not limited to, final approval from the Darien Health Department.
- J. This permit shall be subject to the provisions of Section 1009 of the Darien Zoning Regulations, including but not limited to, implementation of the approved plan within one (1) year of this action (July 11, 2006). This may be extended as per Section 1009.

All provisions and details of the plan shall be binding conditions of this action and such approval shall become final upon compliance with these stipulations, the signing of the final approved plans by the Chairman, and filing of the Special Permit form in the Darien Land Records within 60 days of this action, or this approval shall become null and void.

The motion was made by Mrs. Forman, seconded by Mr. Bigelow and unanimously approved.

Chairman Damanti read the following agenda item:

Amendment of the Darien Zoning Map, The Nielsen Company/One Thorndal Circle, Inc., Thorndal Circle. Proposing to rezone properties and part of the Thorndal Circle right-of-way; and the Department of Transportation right-of-way now zoned DOR-1 (Designed Office and Research, 1 acre minimum lot size) to Office Business (OB). The proposal is also to make the existing Service Business (SB) zone boundary line on Lot #18A contiguous with the northwest property line of Lot #18A. The subject properties are: located on the north, west, and south sides of Thorndal Circle, approximately 100 feet north of its intersection with Boston Post Road, and are shown on Assessor's Map #39 as Lots #11, #16, #17, #17A, #17B, #18, and #18A; part of the Thorndal Circle right-of-way; and the Department of Transportation right-of-way.

The Commission members discussed the draft Resolution and noted that a correction needed to be made on page two with respect to the DOR-1 Zone. The staff will incorporate that correction. The following motion was made: That the Commission adopt the following Resolution to grant in part and deny in part the application to amend the Zoning Map with respect to this area:

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Application Number: Proposed Amendment to Darien Zoning Map
The Nielsen Company/One Thorndal Circle, Inc., Thorndal Circle.

Street Address: Thorndal Circle

Tax Assessor's Map #39 as Lots #11, #16, #17, #17A, #17B, #18, and #18A; part of the Thorndal Circle right-of-way; and the Department of Transportation right-of-way.

Name and Address of Applicant and Property Owner: The Nielsen Company
3 Thorndal Circle
Darien, CT 06820

Name and Address of: William J. Hennessey, Jr., Esq.
Applicant's Representative: Sandak Hennessey & Greco
970 Summer Street
Stamford, CT 06905

Activity Being Applied For: Proposing to rezone properties and part of the Thorndal Circle right-of-way; and the Department of Transportation right-of-way now zoned DOR-1 (Designed Office and Research, 1 acre minimum lot size) to Office Business (OB). The proposal is also to make the existing Service Business (SB) zone boundary line on Lot #18A contiguous with the northwest property line of Lot #18A.

Property Location: The subject properties are: located on the north, west, and south sides of Thorndal Circle, approximately 100 feet north of its intersection with Boston Post Road, and are shown on Assessor's Map #39 as Lots #11, #16, #17, #17A, #17B, #18, and #18A; part of the Thorndal Circle right-of-way; and the Department of Transportation right-of-way.

Zone: DOR-1

Date of Public Hearing: June 28, 2005

Time and Place: 8:00 P.M. Room 206 Town Hall

Publication of Hearing Notices

Dates: June 16 & 23, 2005

Newspaper: Darien News-Review

Date of Action: July 12, 2005

Action: ADOPTED IN PART/DENIED IN PART

Scheduled Date of Publication of
Action: July 21, 2005

Newspaper: Darien News-Review

The Commission has conducted its review and findings on the bases that:

Current Application

1. Proposing to rezone properties and part of the Thorndal Circle right-of-way; and the Department of Transportation right-of-way now zoned DOR-1 (Designed Office and Research, 1 acre minimum lot size) to Office Business (OB). The proposal is also to make

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the existing Service Business (SB) zone boundary line on Lot #18A contiguous with the northwest property line of Lot #18A.

2. Letters of Authorization were received from the State of Connecticut Department of Transportation and Miller Automobile, adjacent property owners, authorizing Mr. Nielsen to proceed with the application for their properties.
3. A public hearing was held on this matter on June 28, 2005 in room 206 of Darien Town Hall at 8:00 P.M. The hearing was closed the same evening.

Description of subject property and vicinity

1. Property Location: The subject properties are: located on the north, west, and south sides of Thorndal Circle, approximately 100 feet north of its intersection with Boston Post Road, and are shown on Assessor's Map #39 as Lots #11, #16, #17, #17A, #17B, #18, and #18A; part of the Thorndal Circle right-of-way; and the Department of Transportation right-of-way.
2. At the public hearing, it was noted that the subject Thorndal Circle office park consists of 15+/- acres; six lots; seven buildings, about 550 parking spaces and 145,000+/- total square feet.
3. The area around the office park is a mix of zoning districts and uses. Immediately adjacent to the site are the R-1/3 (to the north and west), R-1/5 (to the west and south) and SB zones (to the north and east). Surrounding uses include Miller Automotive to the north east, a florist to the southeast, the Darien Police Department to the south, and Interstate 95 to the north.

Findings

Per Section 8-3 of the Connecticut General Statutes, the Commission must state upon the record the reason why such change is made, and note whether it is consistent with the Town Plan. Therefore, the Planning and Zoning Commission makes its findings as follows:

1. In the OB Zone, Executive and Administrative Offices are permitted as of right. In the DOR-1 Zone, such uses are Special Permit uses. The OB Zone also allows Business and Professional Offices as-of-right, while the DOR-1 Zone does not allow them at all. The definitions are listed below.
2. From Section 210 of the Darien Zoning Regulations:
Offices, Administrative and Executive: An office facility which is designed to serve a headquarters or central administration type function and is not designed or oriented to provide goods and services directly to the local public. Parking facilities shall be used on a non-transient basis. In order to minimize the impact on traffic and parking by such facilities on neighboring residential areas, the Commission shall have the right to impose a limit of one employee per 250 square feet.
3. Also from Section 210 of the Darien Zoning Regulations:
Offices, Business and Professional: An office structure which supplies office space for businesses and professional persons who primarily provide goods or services directly to the local population. Such

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facility is generally subdivided into multiple units and typical tenants include doctors, lawyers, real estate agents, architects, engineers, and similar office uses. Requirements for pedestrian access and parking reflect the largely transient nature of the business activities.

4. As noted, Business and Professional offices include doctor's offices and such facilities. For example, a Medical Diagnostic Imaging Center would be considered a doctor's office, a business and professional use. The purpose of the OB Zone, as stated in Section 711 of the Darien Zoning Regulations, "This zone is designed to provide an area suitable for a combination of Executive and Administrative Offices and Business and Professional Offices." Since the existing building has had Executive and Administrative Offices, it is clearly suitable for that use.
5. Rezoning all or part of the existing office park would provide flexibility for the existing property owner, and allow for more options for use of the buildings. Rezoning all or part of the office park continues to preserve the integrity of the DOR-1 Zone, and keeps a clear distinction between Executive and Administrative Office uses and Business and Professional Office uses.
6. The Commission understands that one of the potential uses of the property if rezoned to Office Business (OB) could be a Diagnostic Imaging Facility.
7. Before rezoning the entire office park, the Commission wants to consider the effects of this rezoning of a portion of the property. It will allow the Commission and the property owner to review potential traffic impacts, tenant mix, potential parking impacts, and other issues related to the rezoning from DOR-1 to OB. Thus, the Commission believes that rezoning 4.073+/- acres of the 15+/- acre subject property is consistent with the Town Plan, and will be sufficient to make a proper analysis if the applicant wishes to re-apply for zone changes in the future.

Consistency with Town Plan

1. The Commission believes that this zone map change is fully consistent with the 1995 Town Plan of Conservation & Development for the following reasons: the proposed zone change retains the existing scale of development, while improving the viability of this commercial area (p.76). The Commission continues to adhere to its policy of distinguishing between Executive and Administrative Offices and Business and Professional Offices, as specifically noted within the Town Plan (p.75).

Decision

NOW THEREFORE BE IT RESOLVED that the subject Amendment to the Official Zoning Map is hereby modified and adopted (ADOPTED IN PART/DENIED IN PART).

The Commission hereby approves the following changes to the Official Zoning Map:

1. Change the zone line between the Service Business (SB) Zone and the Designed Office and Research – 1 acre minimum lot size (DOR-1) Zone to be contiguous with the rear lot line of the Miller Automobile property (Assessor's Map #39, Lot #18A). This is shown

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as the zone boundary line on the on the map submitted by the applicant entitled, "Map prepared for The Nielsen Company", by William W. Seymour & Associates, scale 1"=50', dated June 28, 1990. This would make the entire Miller Automobile property zoned Service Business (SB).

2. Rezone #3 AND #6 Thorndal Circle (Assessor's Map #36, Lots #16 & #17) from Designed Office and Research-1 acre minimum lot size (DOR-1) to Office Business (OB). This area of land to be rezoned consists of approximately 4.073+/- acres. This is the area shown as Lot #2 on the map submitted for the record by the applicant entitled, "Map prepared for The Nielsen Company", by William W. Seymour & Associates, scale 1"=50', dated June 28, 1990.

These changes shall take effect on Sunday August 14, 2005 at twelve noon.
This effective date and time will give staff an opportunity to publish this decision in a local newspaper, and file the new official map with the Town Clerk.

The motion was made by Mr. Bigelow, seconded by Mrs. Forman and unanimously approved.

Chairman Damanti read the following agenda item:

Land Filling & Regrading Application #141, Craig M. Ferguson, 176 Long Neck Point Road.
Proposing to fill, excavate, and regrade in association with the construction of a new residence and perform related site development activities. The subject property is located on the west side of Long Neck Point Road, approximately 625 feet south of its intersection with the its southern terminus with Pear Tree Point Road, and is shown on Assessor's Maps #61 and #21, in the R-1 Zone.

The Commission discussed the application and the draft Resolution. The following motion was then made: That the Commission adopt the following Resolution to grant approval for the project:

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RESOLUTION ADOPTED
July 12, 2005**

Application Number: Land Filling & Regrading Application #141

Street Address: 176 Long Neck Point Road
Assessor's Map #61 Lot #21

Name and Address of Applicant
And Property Owner:

Craig M. Ferguson
137 Hollow Tree Ridge Road, #2221
Darien, CT 06820

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Name and Address of
Applicant's Representative: Jay Keillor
Land Engineering Assoc., Inc.
755 Main Street
Monroe, CT 06468

Activity Being Applied For: Proposing to fill, excavate, and regrade in association with the construction of a new residence and perform related site development activities.

Property Location: The subject property is located on the west side of Long Neck Point Road, approximately 625 feet south of its intersection with the its southern terminus with Pear Tree Point Road.

Zone: R-1 Zone

Date of Public Hearing: June 28, 2005

Time and Place: 8:00 P.M. Room 206 Town Hall

Publication of Hearing Notices

Dates: June 16 & 23, 2005

Newspaper: Darien News-Review

Date of Action: July 12, 2005

Action: APPROVED WITH CONDITIONS

Scheduled Date of Publication of Action:
July 21, 2005

Newspaper: Darien News-Review

The Commission has conducted its review and findings on the bases that:

- the proposed activities must comply with all provisions of Sections 400, 850 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed activities are described in detail in the application, and the statements of the applicant's representative whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The proposal is to fill, excavate, and regrade in association with the construction of a new residence and driveway. The regrading associated with the new driveway is within fifteen feet of the property line and requires a Land Filling and Regrading application. The existing driveway will be removed.

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2. The new residence to be constructed and will be connected to the sanitary sewer system in Long Neck Point Road, and the existing septic system will be abandoned.
3. The application has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
4. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Land Filling and Regrading Application #141 is hereby approved subject to the foregoing and following stipulations, modifications and understandings:

- A. Filling, excavation and regrading shall be in accordance with the following plan submitted to and reviewed by the Commission:
 - Grading and Drainage Plan for Property at 176 Long Neck Point Road prepared for Craig M. & Linda S. Ferguson, by Land Engineering Associates, Inc., dated March 14, 2005 and checked on May 12, 2005, Sheet No. 1 of 1.
- B. A professional engineer shall certify that the proposed grading has been achieved per the plans, and that the drainage structures as shown on the approved plan have been installed correctly prior to the issuance of a Certificate of Occupancy for the residence.
- C. Due to the minor nature of the project, the Planning and Zoning Commission will not require a Performance Bond.
- D. Sediment and erosion controls shall be installed to properly manage storm water runoff and to minimize any adverse impacts during the construction and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans. All erosion control measures must be maintained until the disturbed areas are stabilized.
- E. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- F. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agencies. This would include, but not be limited to, approval from Public Works Department/Sewer Services and the Darien Health Department tie into the existing sanitary sewer system in Long Neck Point Road and abandon the existing septic system, and a Street Opening Permit for the new curb cut on Long Neck Point Road.
- G. This permit shall be subject to the provisions of Sections 858 and 1009 of the Darien Zoning Regulations, including but not limited to, implementation and completion of the approved plan

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within one (1) year of this action (July 11, 2006). This may be extended as per Sections 858 and 1009.

All provisions and details of the application shall be binding conditions of this action and such approval shall become final upon the signing of the final documents by the Chairman. A Special Permit form shall be filed in the Darien Land Records within 60 days of this action, or this approval shall become null and void.

The motion was made by Mr. Bigelow, seconded by Mrs. Forman and unanimously approved.

Chairman Damanti read the following agenda item:

Land Filling & Regrading Application #143, Thomas H. McGlade, 40 Arrowhead Way.
Proposing to fill, regrade, and construct a retaining wall; and to perform related site development activities. The subject property is located on the northwest side of Arrowhead Way at the corner formed by its intersection with Winding Lane, and is shown on Assessor's Map #64 as Lot #18, in the R-1 Zone.

The Commission discussed the application and the draft Resolution. The following motion was then made: That the Commission adopt the following Resolution to approve the project.

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RESOLUTION ADOPTED
July 12, 2005**

Application Number: Land Filling & Regrading Application #143

Street Address: 40 Arrowhead Way
Assessor's Map #64 Lot #18

Name and Address of Applicant And Property Owner:	Thomas H. McGlade 7 Bryan Road Rowayton, CT 06853
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Activity Being Applied For: Proposing to fill, regrade, and construct a retaining wall; and to perform related site development activities.

Property Location: The subject property is located on the northwest side of Arrowhead Way at the corner formed by its intersection with Winding Lane.

Zone: R-1 Zone

Date of Public Hearing: June 28, 2005

Time and Place: 8:00 P.M. Room 206 Town Hall

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Publication of Hearing Notices

Dates: June 16 & 23, 2005

Newspaper: Darien News-Review

Date of Action: July 12, 2005

Action: APPROVED WITH CONDITIONS

Scheduled Date of Publication of Action:
July 21, 2005

Newspaper: Darien News-Review

The Commission has conducted its review and findings on the bases that:

- the proposed activities must comply with all provisions of Sections 400, 850 and 1000 of the Darien Zoning Regulations for the Commission to approve this project.
- the size, nature, and intensity of the proposed activities are described in detail in the application, and the statements of the applicant whose testimony is contained in the record of the public hearing, all of which material is incorporated by reference.
- each member of the Commission voting on this matter is personally acquainted with the site and its immediate environs.

Following careful review of the submitted application materials and related analyses, the Commission finds:

1. The subject application is to fill, regrade, and construct a retaining wall; and to perform related site development activities. The existing driveway will be relocated from Winding Lane to Arrowhead Way. There is no activity proposed within fifty feet of wetlands as part of this application.
2. The septic system design for the new residence has been reviewed and approved by the Darien Health Department. An additional septic system is to be installed to service the proposed detached garage with upper level family room with bathroom. The second septic system has also been approved by the Darien Health Department.
3. The application has been reviewed by the Commission and is in general compliance with the intent and purposes of Section 1000.
4. The proposal conforms to the standards for approval as specified in Section 1005 (a) through (g) of the Darien Zoning Regulations.

NOW THEREFORE BE IT RESOLVED that Land Filling and Regrading Application #143 is hereby approved subject to the foregoing and following stipulations, modifications and understandings:

- A. Filling, regrading, and construction of the retaining wall shall be in accordance with the following plan submitted to and reviewed by the Commission:
 - McGlade Residence, 40 Arrowhead Way, by Gunn Landscapes, LLC, last revised 2.22.05, Sheets L-1.0 through L-8.0.

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- B. A professional engineer shall certify that the proposed grading has been achieved per the plans and that the drainage facilities have been installed correctly prior to the issuance of a Certificate of Occupancy for the residence.
- C. Due to the minor nature of the project, the Planning and Zoning Commission will not require a Performance Bond.
- D. Sediment and erosion controls shall be installed to properly manage storm water runoff and to minimize any adverse impacts during the construction and until the area has been revegetated or restabilized. The Planning and Zoning Department shall be notified prior to commencement of work and after the sedimentation and erosion controls are in place. The staff will inspect the erosion controls to make sure that they are sufficient and are as per the approved plans. All erosion control measures must be maintained until the disturbed areas are stabilized.
- E. In evaluating this application, the Planning and Zoning Commission has relied on information provided by the applicant. If such information subsequently proves to be false, deceptive, incomplete and/or inaccurate, the Commission reserves the right, after notice and hearing, to modify, suspend, or revoke the permit as it deems appropriate.
- F. The granting of this approval does not relieve the applicant of the responsibility of complying with all other applicable rules, regulations and codes of the Town, State, or other regulating agencies.
- G. This permit shall be subject to the provisions of Sections 858 and 1009 of the Darien Zoning Regulations, including but not limited to, implementation and completion of the approved plan within one (1) year of this action (July 11, 2006). This may be extended as per Sections 858 and 1009.

All provisions and details of the application shall be binding conditions of this action and such approval shall become final upon the signing of the final documents by the Chairman. A Special Permit form shall be filed in the Darien Land Records within 60 days of this action, or this approval shall become null and void.

The motion was made by Mr. Bigelow, seconded by Mr. Spain and unanimously approved.

Chairman Damanti read the following agenda item:

Amendment of Coastal Site Plan Review #171-A and Flood Damage Prevention Application #182-A, Stark, 15 Seagate Road.

Proposal to add stairs to rear of house.

The Commission members discussed the application and noted that the proposed stairway will not be any closer to the waterfront of Holly Pond than the existing building. The new stairs will end on the existing patio which is substantially lower than the first floor. After further discussion, the following motion was made: That the Commission approve the application to amend the Coastal

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Site Plan and Flood Damage Prevention Application to incorporate the additional stairs from the first floor down to the existing patio at the lower level of the structure.

The motion was made by Mr. Conze, seconded by Mr. Bigelow and unanimously approved.

PUBLIC HEARING

At 8:15 p.m., Chairman Damanti opened the public hearing portion of the meeting. He read the first item on the public hearing agenda:

Coastal Site Plan Review #208, Flood Damage Prevention Application #224, Pamela A. Makszin, 35 Pear Tree Point Road. Proposing to raze the existing residence, construct a new single-family residence with driveway, abandon the existing septic system, tie into the public sanitary sewer system and to perform related site development activities within regulated areas. The subject property is located on the west side of Pear Tree Point Road approximately 500 feet south of the north intersection of Pear Tree Point Road and Long Neck Point Road and is shown on Assessor's Map #60 as Lot #55, in an R-1 Zone. ***POSTPONED UNTIL SEPTEMBER 27, 2005.***

Mr. Damanti said that the public hearing regarding this matter had been postponed and will be re-scheduled for September 27, 2005. He then read the following agenda item:

Subdivision Application #607, Coastal Site Plan Review #209, Thomas L. Kelly, Jr., 58 Sunswyck Road. Proposing to divide the existing property into two lots and open space and perform related site development activities within a regulated area. The subject property is on the east side of Sunswyck Road, approximately 400 feet south of its intersection with Tory Hole Road, and is shown on Assessor's Map #62, as Lot #22, in the R-1 Zone. ***HEARING WILL BE CONTINUED TO SEPTEMBER 27, 2005.***

Attorney Wilder Gleason said that the Environmental Protection Commission has not yet made a decision regarding this matter and he suggested that the Planning & Zoning Commission continue the public hearing regarding this matter on September 27, 2005. He granted an extension of the statutory time period so that the Commission could continue the hearing at that time. The Commission agreed to continue the public hearing regarding the Kelly application on September 27, 2005.

Chairman Damanti read the following agenda item:

Subdivision Application #164-A, Nancy Hyland, 40 Noroton Avenue. Proposing to subdivide the existing properties into four building lots with associated open space and perform related site development activities. The subject properties are located on the east side of Noroton Avenue approximately 110 feet north of its intersection with Clock Avenue and are shown on Tax Assessor's Map #42 as Lots #151 and #152, in an R-1/3 Zone.

Mr. Bigelow explained that he was a neighboring property owner and that he would not participate in the matter. He recused himself and left the meeting room.

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Attorney Arthur Engle represented the applicants. He said that he recognized that the Commission members only had four members participating in the public hearing and he opted to proceed with the public hearing. Attorney Damanti said that he represents clients that are currently involved in a matter with clients of Attorney Engle. Mr. Damanti said that the matter is not related to the pending subdivision and that he did not feel that there was any personal or financial conflict of interest with his participation regarding the Hyland application. He did say that if anyone did have any objection to his participation or any perceived conflict of interest, that he would recuse himself. No one expressed any concerns or reservations about his continued participation.

Attorney Engle explained that the property on Noroton Avenue has been in the Eddy family for many years. He explained that they now propose to subdivide the property into four building lots, one of which would contain the existing house that was built in approximately 1901. In order to preserve that house, they have obtained a variance from the Zoning Board of Appeals with respect to the distance from the existing house to the new street line to be created. The new street will have a 50 foot right-of-way with a hammer head style turn around because it will be a low volume, private, residential street. The actual paved portion of the street will only be about 20 feet wide. Attorney Engle explained that the utilities for the new houses will be located on the southerly portion of the new street right-of-way to avoid impacting the large beech tree (approximately 60 inch diameter trunk) and the large maple trees located near the northerly portion of the street right-of-way. He said that the existing swimming pool, barn and other accessory structures on the property will be removed as part of this project. Attorney Engle explained that a drainage report has been prepared and the engineer has designed the storm drainage system to accommodate a 100 year storm (only a 50 year design storm is required). The storm water drainage system will retain increases in runoff from the new roof areas, driveways and other impervious surfaces on the site.

Attorney Engle said that all of the lots comply with the R- $\frac{1}{3}$ requirements and the project complies with the open space requirement and storm drainage requirements of the Regulations. He said that each of the new houses will comply with the appropriate setback Regulations. Attorney Engle explained that they had considered using a conservation subdivision approach as an alternative but that type of design would result in a more concentrated development closer to the neighbors. He said that the barn looks wonderful from the outside but they have had an engineer, Arnie Thune, investigate it and he has determined that the barn is not structurally sound. Attorney Engle said that they are trying to preserve the large maple trees near the north property line and the large beech tree which would be within the new street right-of-way. He said that they are trying to work with the neighbors and address all of their concerns and will continue to do so. He opined that the plans fully comply with Regulations and submitted the following materials: Revised Street Location Plan, Revised Street Utility Plan, April 7, 2005 letter from Arnie Thune regarding the barn; April 8, 2005 letter from Richard Whitehead and a July 7, 2005 letter from Richard Whitehead.

Commission members noted that alternatives one and two for Lot No. 2 call for a conceptual house plan layout of approximately 2,600 square feet. Mr. Conze noted that the proposed new house would be just 20 feet from the existing old house and that placing such a large structure so close to the old house would not be in character with the site or the neighborhood. Attorney Engle said the original concept was to remove all of the structures from the property, including the old house. But they worked hard to save the old house and they have obtained a variance to do so. He said that the conceptual designs for the development of Lots 2, 3 and 4 show potential new houses that could be built by future owners of those lots. The exact size and location of the new houses are not specified

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in the drawings and plans. He noted that they have proposed to re-locate the paved portion of the new street so that it will be on the southern edge of this new right-of-way in order to minimize impacts on the large trees on the northerly side of the property. They also have proposed to provide a landscaping buffer between the new development activities and the neighbors but that is still conceptual at this time. He said that there is no guarantee about what the eventual builder of the houses will plant, but it is likely that the builder will plant new trees to provide privacy for the buyers of the new houses as well as separation from the neighboring houses.

Attorney Gleason represented Mr. & Mrs. Rice and Mr. & Mrs. Leinroth and said that the project is not in compliance with character of the neighborhood and that the illustration of a foot print of 2,600 square feet could result in the construction of the house having as much as 7,200 square feet of finished, enclosed area. Some of this might be the garage but it would certainly be much larger than any of the houses in the surrounding neighborhood. He submitted copies of maps that he had submitted highlighting the undersized and oversized lots in the neighborhood. He said that the proposed development of a new street and new houses in this well established neighborhood would not be in character with the neighborhood. Attorney Gleason said that the proposed street is kitty corner with Casement Street and is therefore not in compliance with the separation requirements of the subdivision regulations. He also said that the large beech tree is a rare species and needs to have protection. He asked that the Commission continue the public hearing so that the revised plans submitted by Attorney Engle could be analyzed by his experts to determine what, if any, impact they would have on the trees in the area.

Attorney Gleason submitted portions of the Subdivision Regulations and referred to Article 4, Section A2(b) regarding tree preservation needed for all trees over 12 inches in diameter and for all rare species trees regardless of their size. He also noted that the applicant needs to present documentation regarding how the Home Owners' Association would be established and governed. This is necessary because the Home Owners' Association will own and maintain the road and possibly own and maintain the open space. He said that Article 4, Section B of the Subdivision Regulations concerns the layout of individual lots and requires that the lot lines be at right angles to or radial with the street right-of-way. He said that some of the proposed lines comply with those Regulations, but other lot lines do not comply with the Regulations.

Attorney Gleason referred to page 26 of the Subdivision Regulations and said that Section E7 requires a 500 foot separation between streets and a 150 foot minimum separation of offset streets. He said that the proposed street layout does not comply with these Regulations. He submitted a copy of the Zoning Board of Appeals variance that was granted for the preservation of the existing house. He pointed out that the ZBA recommended the merger of Lots 1 and 2 as being the appropriate way to deal with this property. He also submitted a list of defects and omissions with respect to the application and he submitted a copy of the Resolution that the Planning & Zoning Commission had approved for the Bishop's Gate subdivision. He noted that in that application six lots had been proposed and the Planning & Zoning Commission mandated that two of the parcels be merged together and this resulted in a total of only 5 building lots.

Mike Sheehan of 41 Noroton Avenue said that he moved to the area within the past 6 months due to its stable character and he said that the proposed subdivision would certainly change the character of the neighborhood. He said that the new street will add a dangerous intersection to Noroton Avenue which is very busy and that the existing house will likely be knocked down in the future.

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He said that the Commission should deny the application because it is not in keeping with the neighborhood nor is it in compliance with the Regulations.

Margaret Bigelow of 9 Clock Avenue read a letter in opposition to the application. She also submitted photographs illustrating the existing conditions in the area. She said that the Commission needs to preserve or replace the landscaped area along the common boundary and that headlights from the proposed new street and driveways would cause a severe nuisance to her property. She said that storm water drainage is a substantial concern. She said that her property is slightly higher than the applicant's property at this time, but she feared that the redevelopment of the Hyland property would result in a change of the grade and this would create drainage problems for she and the other neighbors.

Josephina Rice of Clock Avenue said that she and her husband have planted and maintained a garden for 27 years and that the garden extends across the boundary line and into the Hyland property. She read a letter in opposition to the application. Her husband, John Rice submitted photographs of the existing conditions and possible new houses that might be built in the area. Mrs. Rice said that she has been very frustrated in her attempts to work with Attorney Engle who represents the property owners. She said that she has had to hire Attorney Gleason to deal directly with Attorney Engle because she has not been able to receive satisfactory responses from Attorney Engle regarding her concerns.

Evangeline Murray of 49 Noroton Avenue said that the existing house plus three new houses using a new street will be more than just a minor little street adding traffic to Noroton Avenue. She questioned who would be willing to buy the existing old house if there will only be 20 feet between the existing house and the neighboring new house to the east. She opposed the application and felt that the Commission should deny it because it would create unsafe and inappropriate conditions.

Danielle Leinroth of 46 Noroton Avenue said that she owns the property to the north and she is very concerned about the preservation of the many large trees in the area. She said that the canopy of the beech tree is approximately 75 feet in diameter and is accurately represented on the survey map. She said that the beech trees have many low limbs and they do not tolerate being pruned. She said that preservation of the low branches is a key concern. She submitted an arborist's report explaining that another impact of the proposed development will be wind throw which will impact the trees in a few years (after the houses have been built and sold). She said that removing the maple trees near the street will severely affect the street scape that the applicant claims that they want to preserve. The report from the arborist (Save-a-Tree) dated July 11, 2005, was submitted.

John Orem of 43 Noroton Avenue said that the Commission cannot and should not approve the application at the expense of the public safety. He said that Noroton Avenue is a very busy north south connector road and although the speed limit is posted as 25 M.P.H., 35 to 40 M.P.H. is the normal speed traveled by many motorists. He said that there are already four existing driveways in the immediate area around the proposed new street and that adding three more houses to the area will create safety risk. He noted that sight lines in the area are dangerous. He said that the Commission should not approve the application.

Attorney Engle said that he would like to continue the public hearing to respond to the issues expressed by the neighbors and to continue to work with those neighbors to resolve the issues. He

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granted an extension of 35 days beyond the normal statutory requirements so that the Commission could continue the public hearing in September of 2005. The following motion was made: that the Commission continue the public hearing regarding this matter on September 13, 2005. The motion was made by Mr. Spain and seconded by Mrs. Forman. Voting in favor were Misters Spain, Conze and Damanti and Mrs. Forman. Mr. Conze said that this is a neighborhood of small houses and that the applicant should revise the plans and work with the neighbors so that the continuation time will be well used and that the public hearing in September will be a discussion of how the issues have been resolved.

Chairman Damanti read the following agenda item:

Amendment of Business Site Plan #24-M/Special Permit, Mamma Mia Pizzeria, 25 Old King's Highway North. Proposing to establish outdoor dining in front of the existing restaurant. The subject property is within Goodwives Shopping Center, which is located on the south side of Old King's Highway North, approximately 150 feet southwest of its intersection with Brookside Road, and is shown on Assessor's Map #71 as Lot #19 in the DC Zone.

Staff and Commission members noted that no one appeared on behalf of the applicant and no one has submitted proof of mailing of notification to neighboring property owners. The Commission concluded that they could not conduct the public hearing and will have to deny the Mamma Mia Pizzeria application without prejudice.

Mr. Bigelow then returned to the meeting,

Chairman Damanti read the following agenda item:

Flood Damage Prevention Application #225, Carl & Anita Mickels, 36 Lake Drive. Proposing to raze the existing residence and construct a new single-family residence and perform related site development activities within a regulated area. The subject property is located on the northwest side of Lake Drive approximately 1,500 feet west of its intersection with Hoyt Street, and is shown on Assessor's Map #30 as Lot #3, in the R-1/3 Zone.

Holt McChord, Professional Engineer, represented the applicant and explained that the property is located on the west side of Lake Drive and just east of the Noroton River. He said that the high point of the property is at the house site. The proposed construction involves removing the existing out buildings and residence and constructing a replacement dwelling. The small island of high land is above elevation 43. The proposed house will have the first floor elevation of 46.6 feet above sea level. The expected flood level in the area is 42 feet above sea level.

Mr. McChord explained that the storm water drainage system has been designed to properly manage all of the roof runoff for a 25 year storm. There will be no work within the state stream encroachment lines adjacent to the Noroton River and that the proposed replacement house will be properly anchored to the foundation to avoid any potential flotation or collapse of the house in an extreme storm condition. In response to a question, Mr. McChord said that in a typical rain storm, the storm runoff water from the proposed house will be properly directed away from the neighboring properties so that the new house will not have any impact on the neighbors. He said

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that they have obtained a Permit from the Environmental Protection Commission to proceed with the work within 100 feet of the Noroton River.

There were no comments from the public regarding the application. The public hearing regarding this matter was closed at 10:25 p.m.

Chairman Damanti read the following agenda item:

Land Filling & Regrading Application #142, John Ackell & Shelley Carder, 68 Arrowhead Way. Proposing to excavate and grade along the northern portion of the property and to perform related site development activities. The subject property is located on the west side of Arrowhead Way, approximately 150 feet south of its intersection with Canoe Trail, and is shown on Assessor's Map #70 as Lot #50, R-1 Zone.

Commission members noted that they had previously approved a slight amount of work on this site and within the flood hazard zone. The current application involves filling and regarding more than 25 feet away from the building and a public hearing is necessary before that plan can be acted upon.

Sara McCool of Ungemac McCool landscaping explained that they are now proposing to cut down a rocky knob in the backyard of the proposed house. This will allow for the regrading of the area to have a flat backyard play area outside of the 50 foot regulated area surrounding the wetlands. The shed in the rear portion of the property will be relocated to comply with the setback requirements and all filling and regrading and disturbance will be kept at least 50 feet away from the wetlands so that they will not need a Permit from the Environmental Protection Commission. Mrs. McCool submitted a revised landscaping plan that had been date stamped July 8, 2005. In response to questions about the plan, Mrs. McCool said that the surface water flow directions will remain unchanged. There will be no additional water flowing toward neighboring properties. She said that the neighbors have all been made aware of the proposed plans and they have no concerns or problems.

There were no comments or questions from the public. The public hearing regarding this matter was closed at 10:33 p.m.

There being no further items on the public hearing agenda, the Commission returned to the general meeting agenda and the only item left there was possible discussion of other business. The following motion was made: That the Planning & Zoning Commission discuss the **Business Site Plan #171-A, Thomas Golden Realty for property at 1063 and 1077 Boston Post Road.** The motion was made by Mr. Bigelow, seconded by Mrs. Forman and unanimously approved.

Commission members noted that they had received a letter dated July 8, 2005 from Attorney William J. Hennessey, Jr. representing the applicant and that the letter was submitted after the close of the public hearing and could not and would not be considered as part of the review and decision regarding the application. Mr. Conze said that he had received a phone call from Dwight Collins, the son of Arthur Collins who is one of the partners in the ownership of 1077 Boston Post Road. This phone call occurred after the public hearing and the information could not and would not be considered in the decision making regarding the application. A representative of Attorney Hennessey's office was in the audience and was instructed by the Commission to convey to Mr.

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Hennessey that the Commission would not consider his letter of July 8th in their decision regarding the application. They agreed that a decision regarding this matter would be made by the end of this month.

There being no further business, the meeting was adjourned at 10:40 p.m.

Respectfully submitted,

David J. Keating
Assistant Director of Planning

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